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HEADS UP

Bulgaria appoints Digital Services Coordinator, proposes procedures for exercising its powers and aims to facilitate the process of building network infrastructure

A draft law amending the Electronic Communications Act (the “**Proposal**”) was published [for public consultation](#) on 15 December 2023. As the Digital Services Act will start to apply for all providers of intermediary services from 17 February 2024, the Proposal aims to provide the national implementing measures – to designate the competent authority to be responsible for the supervision of those providers (the so-called Digital Services Coordinator) and to establish specific procedures for the exercise of its powers. What’s more - the Proposal is used as an instrument to introduce additional measures facilitating the construction of network infrastructure.

The Proposal may have escaped the attention of many stakeholders, not only because of the end-of-year holidays, but also because the rules applicable to information society services and network infrastructure are being introduced through legislation regulating electronic communications. **The public consultation will run until 15 January 2024.** Until then, the stakeholders have the opportunity to assess the relevance of the proposed changes to their own operations and to respond to the public consultation. Or, alternatively, to start following the legislative process more closely, because if the Proposal is adopted by the Parliament, the new rules will start to apply as from 17 February 2024.



Why should you care?

The proposed amendments are at very early stage of the legislative process, as public consultations are held while still preparing the draft of the law. Before submitting the draft to the Parliament, the responsible ministry has to collect feedback from citizens and interested parties, evaluate and either accept or reject the suggestions made by the participants. While the proposed rules are not yet an effective legislation, this phase allows all stakeholders to assess, provide feedback, and more importantly - **to influence the future legal framework.**

What changes are proposed?

The Proposal contains two different sets of rules that may be relevant for two distinct types of service providers – [for intermediary service providers](#) and [for network operators](#).



FOR INTERMEDIARY SERVICES PROVIDERS

The Digital Services Act is relevant to providers of intermediary services - information society services that fall into one of the following categories:

mere conduit

or

caching

or

hosting services

This can include a wide range of services such as:

- ✓ internet exchange points
- ✓ internet access
- ✓ cloud infrastructure services such as IaaS and PaaS,
- ✓ DNS services
- ✓ number-independent interpersonal communication services
- ✓ content delivery networks
- ✓ web hosting
- ✓ services enabling the exchange of information and content online, including file storage and sharing,
- ✓ online search engines
- ✓ online platforms (e.g., social networks, video sharing platforms, platforms enabling remote contracting with merchants, app stores, online gaming platforms, websites comparing services and products by features and prices, etc.)



If your company is a provider of any of the above services, you should be aware that Bulgaria is required to appoint (not later than 17 February 2024) a specific authority to act as the **Digital Services Coordinator** and to establish specific rules for the exercise of its powers and for penalizing the violations of the Digital Services Act.

In that regard the Proposal includes:

Designation of the Communications Regulatory Commission as the national Digital Services Coordinator

Currently, online content is regulated separately from the transmission of signals. Thus, information society services, including online intermediary services under Regulation (EU) 2019/1150 are subject of the supervision of the Consumer Protection Commission under the Electronic Commerce Act. Conversely, electronic communications are supervised by the Communications Regulation Commission under the Electronic Communications Act. The Proposal, however, establishes a consolidated regulatory body with the mandate to oversee not only electronic communications providers but also intermediary services providers and will have the effect of incorporating a specific type of information society service into an unrelated legislative framework.

Establishment of a quasi-registration system for intermediary services providers who:

- are incorporated in Bulgaria;
- have a representative in Bulgaria;
- are not established in the EEA and do not have representative in the EEA, but provide services to consumers in Bulgaria.

According to the Proposal, it is an obligation of the Communications Regulation Commission to establish and maintain a list of intermediary service providers. Ultimately, such list is of informative nature and not-being included does not isolate from the obligations under the Digital Services Act.

Establishment of the rules and procedures for the designation of, and withdrawal of the status of vetted researcher and trusted flagger and for the certification of out-of-court dispute resolution bodies in Bulgaria.

Extending the information requests of the Communications Regulation Commission to intermediary service providers and giving the Commission significant powers not only to investigate (without regards to any trade secret or other secret protected by the law), but also to enter premises and seize evidence and documents for examination, and to restrict user access to the service or online interface.

Providing for a special procedure for establishing violations of the Digital Services Act. Based on the Proposal both the determination of the violation and the imposition of sanctions will be carried out in the framework of a single procedure concluded by the issuance of a single document – resolution of the Communications Regulation Commission. The said procedure is a deviation from the effective Administrative Offences and Sanctions Act. It is justified by the requirements of the Digital Services Act to ensure that violations can be sanctioned in a manner that is effective, proportionate and dissuasive, although it is not clear why the existing administrative penal procedure does not suffice.

Providing for significant administrative fines of up to six per cent of the service provider's global annual turnover for the preceding year (for breach of obligations under the Digital Services Act), up to one per cent of annual turnover for failure to comply with requests for information, and a daily penalty of up to one per cent of the average daily annual turnover in the preceding financial year to encourage the cessation of the infringement.



FOR NETWORK OPERATORS

The Proposal concerns not only providers of intermediary services, but also operators of electronic communications networks and providers of water, gas, electricity and transport infrastructure, when involved in construction or expansion of physical infrastructure for the deployment of electronic communications networks.

The proposed texts continue the vicious legislative practice of changing a number of legal acts by means of the transitional and final provisions of the amended act. In this case, a significant part of the changes proposed through the transitional and final provisions of the Electronic Communications Act relate to would-be-rules of the Electronic Communications Networks and Physical Infrastructure Act and the Spatial Development Act. More specifically:

The methodology under the Electronic Communications Networks and Physical Infrastructure Act on the basis of which network operators determine their prices for access and interconnection will be supplemented in order to determine also the rules for calculating the amount of compensation for easement rights on certain types of real estate (those being private state property and private municipal property).

The construction of physical infrastructure in a co-owned building or in common areas of a condominium building shall be carried out on the basis of a written contract, however free of charge. Given that such properties are usually owned by citizens and legal entities, use without compensation may be in contradiction with those provisions of Bulgarian constitution that are aimed to guard the inviolability of the private ownership.

Currently, the Spatial Development Act does not distinguish between the passive network elements (the physical infrastructure) and the active elements and equipment installed thereon. As a result, both elements of mobile networks are built generally in accordance with the regime applicable for third category construction projects. The proposed amendments aim to apply different regimes to different types of construction sites or activities. For example, physical infrastructure permanently fixed to the ground by means of concrete foundations and designed to accommodate active equipment will remain within the scope of third category construction projects, but the other types of physical infrastructure for the provision of electronic communications networks, built in urban and non-urban areas, will generally fall in the fifth or sixth category construction projects.

Other measures to ease the construction regime for the various elements of the network include the replacement of the registration procedure with the national health authorities with a notification regime, abolition of the requirement to present in advance a document issued by the Communications Regulation Commission certifying the approval of the respective construction/maintenance activities, and abolition of the notification by the Communications Regulation Commission to the mayors of the respective municipalities and the district health inspectorates of the registration of the mobile stations in its registers.

Actions to take

For both intermediary services providers and network operators:

01

Consider whether your services fall within the scope of the Digital Services Act or are related to network infrastructure and whether they are affected by the [proposed amendments](#).

02

If affected, take time to prepare your position and to respond to the public consultation. The draft law is far from good. Even if a stakeholder steps in with suggestions to improve the language, fix the flaws and provide clarity, it would benefit everyone. Businesses need clear rules and stability, not uncertainty about how a new rule will be interpreted by the authorities.

03

Even if your company prefers not to participate or does not have the necessary resources, you should take note of the proposed expanded role of the Communications Regulation Commission, the proposed significant change in its powers and the new enforcement regime, as this will have a direct impact on your activities if the draft becomes law and you are required to address non-compliance with obligations under the Digital Services Act.

04

Irrespective if intermediary service provider or network operator, follow closely the legislative process, to ensure your company is prepared for any future changes.

How we can help

Kinstellar is monitoring closely the legislative landscape surrounding the TMT sector in all EU countries in which we operate. We will continue to publish updates on the national measures affecting the industry and explaining how they may impact your business.

At Kinstellar, we take pride in supporting clients within highly regulated sectors that demand ongoing legal guidance. Our team of experts navigates them through the intricate realm of opportunities, from facilitating market entry to customizing services to align with local legal requirements.



For more information and tailored legal advice,
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